



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,551	04/22/2004	Craig Troop	5091-0004	6366

28777 7590 06/28/2005
MICHAEL L. DIAZ, P.C.
555 REPUBLIC DRIVE, SUITE 200
PIANO, TX 75074

EXAMINER

LEWIS, AARON J

ART UNIT PAPER NUMBER

3743

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/829,551

Applicant(s)

TROOP, CRAIG

Examiner

AARON J. LEWIS

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Pi ('288).

As to claim 1, Pi discloses a method of reducing an amount of positive air pressure that attending personnel must maintain in a supine obese individual's lungs to move the individual's diaphragm, said obese individual lying in an approximately supine position on a base surface (figs.1-3,8,9), said method comprising the steps of: raising the individual's head and neck above the base surface (figs.2,3,8,9); and supporting the individual's upper body at an angle (col.3, lines 63-66) sufficient to cause the individual's abdominal mass to fall away from the diaphragm, thereby reducing the amount of air pressure required in the obese individual's lungs to move the individual's diaphragm.

In the method disclosed by Pi, a patient's head and neck are raised at an angle (22-40 degrees) relative to a base surface for the purpose of facilitating endotracheal intubation. The position of such a patient's head, neck and shoulders (figs. 1-4, 8, 9 of Pi) relative to the patient's middle and lower torso would inherently (due to gravity) cause any patient's (including an obese patient) abdominal mass to fall away from the diaphragm, thereby reducing the amount of air pressure required in an obese individual's lungs to move the individual's diaphragm.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pi ('288) in view of Popitz ('774).

The difference between Pi and claim 2 is supporting the individual's head and neck on a head and neck support approximately six inches in height above the base surface.

Popitz teaches supporting an individual's head and neck on a head and neck support (1) approximately six inches (col. 4, lines 21-27) in height above the base surface for the purpose of automatically aligning the airway axes thereby opening the airways of the individual and facilitating the intubation of the individual if necessary (col. 2, lines 16-24).

It would have been obvious to modify the height of the head and neck support of Pi to make it approximately six inches because it would have provided a means for

automatically aligning the airway axes thereby opening the airways of the individual and facilitating the intubation of the individual as taught by Popitz.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pi ('288) in view of Cotroneo ('632).

The difference between Pi and claim 3 is anesthetizing the patient and ventilating the patient.

Cotroneo, in a head and neck support for preparing a patient for endotracheal intubation, teaches anesthetizing the patient (col.5, lines 14-20) and ventilating the patient (col.1, lines 43-58) for the purpose of placing a patient in a state which is conducive to a medical operation and for the purpose of maintaining a patient's airway during an emergency situation, respectively.

It would have been obvious to modify Pi to include the steps of anesthetizing and ventilating a patient because it would have placed a patient in a state which is conducive to a medical operation and maintained a patient's airway during an emergency as taught by Cotroneo.

6. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pi ('288) in view of Cotroneo ('632) as applied to claim 3 above, and further in view of Popitz ('774).

The difference between Pi as modified by Cotroneo and claim 4 is raising the patient's head and neck approximately six inches above the base surface.

Popitz teaches supporting an individual's head and neck on a head and neck support (1) approximately six inches (col.4, lines 21-27) in height above the base surface for the

Art Unit: 3743

purpose of automatically aligning the airway axes thereby opening the airways of the individual and facilitating the intubation of the individual if necessary (col.2, lines 16-24).

It would have been obvious to further modify the height of the head and neck support of Pi to make it approximately six inches because it would have provided a means for automatically aligning the airway axes thereby opening the airways of the individual and facilitating the intubation of the individual as taught by Popitz.

As to claim 5, Cotroneo as discussed above, also teaches the step of ventilating a patient by moving air into the patient's lungs with a ventilation bag (col.1, lines 43-58).

As to claim 6, Pi (figs.3 and 8) discloses extending the individual's neck over a neck support; and rotating the individual's head backwards on a head support.

Conclusion

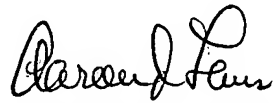
7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the art is cited to show relevant head and neck supports.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (571) 272-4795. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



AARON J. LEWIS
Primary Examiner
Art Unit 3743

Aaron J. Lewis
June 24, 2005